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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

Docket No. ~~1966~~ 224

JOHN WEBB,
Petitioner,

vs.

STATE OF TENNESSEE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

John Webb, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Tennessee in the above-styled case.

OPINIONS BELOW

The opinions of the Supreme Court of Tennessee in this case have not been reported or published. The opinion affirming the Trial Court and the opinion on Petition to Rehear are set out in full in the Appendix hereto.

JURISDICTION

The opinion and judgment of the Supreme Court of Tennessee was filed and entered on November 3, 1965. A petition to rehear and a supplemental petition to rehear were filed, and on March 9, 1966, the Supreme Court filed and entered its opinion on the petition to rehear. On March 11, 1966, the Supreme Court of Tennessee entered an order permitting petitioner ninety (90) days in which to petition the United States Supreme Court for a writ of certiorari. The Supreme Court of Tennessee is the highest appellate court in the State of Tennessee.

Jurisdiction of this Court is invoked under sub-section 3 of Section 1257, Title 28, United States Code.

QUESTIONS PRESENTED

1. Does a conviction based upon an accused's refusal to reveal, to an investigating officer, prior to any arrest, incriminating facts, concerning the location of stolen property, constitute a denial of the privilege against self-incrimination?

2. Does a police officer's verbal order, without any search or arrest warrant, and without any arrest, to the accused not to move certain property constitute an unlawful seizure, such that a conviction may not be based upon that fact and of the accused's violation of the officer's order, by subsequently moving the property?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States:

Amendment 4. Set out in the Appendix hereto.
Amendment 5. Set out in the Appendix hereto.
Amendment 14. Set out in the Appendix hereto.

TENNESSEE CODE SECTIONS INVOLVED

Tennessee Code Annotated:

Section 39-4217. Set out in the Appendix hereto.

STATEMENT OF THE CASE

On September 23, 1963, an automobile belonging to Russell Ranson was stolen from a parking lot. He reported the theft to the police, who recovered the automobile in a partially stripped condition. Two days later, he was at the garage, owned and operated by petitioner, and while there, he saw certain front end parts on another automobile and recognized them, by certain marks, as having come from his stolen automobile. He reported the fact to the police.

City Detective Mathis and Investigator Shutters went to the garage and questioned petitioner. Investigator Shutters told petitioner not to move the automobile which allegedly contained the stolen parts. Investigator Shutters then left, and when he later returned, the automobile was missing. Petitioner refused to tell the Investigator where the automobile had been moved to or the name of the owner. He was then arrested. Up to that time, there were no warrants of arrest or search.

He was subsequently indicted upon a charge of receiving and concealing stolen property, and went to trial before a jury in the Criminal Court of Hamilton County at Chattanooga, Tennessee. Investigator Shutters testified to the foregoing facts.

Petitioner was found guilty and sentenced to three years in the penitentiary. He filed motions for a new trial which were overruled. He appealed to the Supreme Court of Tennessee and assigned as error the insufficiency of competent evidence of guilt.

The Supreme Court of Tennessee affirmed the conviction, and in its Opinion, that Court reviewed the facts and found:

> "Mr. Shutters testified that he told the defendant to leave [the automobile containing allegedly stolen parts] until he [the defendant] was further advised by the officers. Later in the day, Mr. Shutters returned to the garage and found the car to which the stolen parts had been affixed, missing. . . . Mr. Shutters testified that the defendant refused to give him the name of the owner of the car, but would only tell him that he thought the owner lived in Copper Hill. As a result of this behavior, the defendant was arrested."

That Court further held:

> "[T]he defendant knowingly refused to reveal [to Investigator Shutters] the name of the owner of the car to which the stolen parts were attached. This would certainly be a basis for a finding that the defendant knowingly concealed stolen property."

Petitioner then filed a Petition to Rehear which, *inter alia*, raised the following issues: that Investigator Shutters had no right to order petitioner as he did; that petitioner had no duty to reveal any incriminating facts concerning the location and owner of the car to which was affixed the allegedly stolen parts; and that there was no competent evidence of concealment (within the meaning of the substantive laws governing a charge of "receiving and concealing stolen property").

Petitioner then discharged his counsel and employed new counsel who filed a Supplemental Petition to Rehear, which, *inter alia*, raised the following issues: that the actions of Investigator Shutters, in instructing petitioner not to move the car, were such an exercise of control and

dominion as would constitute an unlawful seizure; that petitioner's subsequent violation of the said instruction (by permitting the car to be moved) could not be used as evidence of guilt.

The Court overruled both petitions in its Opinion on Petition to Rehear and held:

> "Webb's refusal to reveal to the authorities the identity and whereabouts of the person on whose car the stolen parts had been used . . . satisfactorily establishes concealment."

This Petition for Certiorari was then filed.

REASONS FOR GRANTING WRIT OF CERTIORARI

The Supreme Court of Tennessee has decided federal questions of substance in a way probably not in accord with applicable decisions of the Supreme Court of the United States.

The substantive law of Tennessee, on the criminal charge of "receiving and concealing stolen property", requires proof of "concealment", as an aspect of criminal intent. *Williams* v. *State*, ... Tenn. ....., 390 S.W.2d 234 (1965); *State* v. *Missio*, 105 Tenn. 218, 58 S.W. 216 (1900). In both of its Opinions, the Supreme Court of Tennessee reviewed the facts and found "concealment" in:

1. Petitioner's moving the car after having been instructed by the Investigator not to move it; and
2. Petitioner's refusal to reveal to the authorities the identity and whereabouts of the person who had the car.

There was no search warrant, arrest warrant or arrest at the time of the events in question. By his actions, in

instructing petitioner not to move the car, the Investigator, in effect, unlawfully seized the property. He purported to exercise control and dominion over it. As the seizure was unlawful, so the accused's violation of that instruction cannot be the basis of his conviction. *Mapp* v. *Ohio*, 367 U.S. 643, 81 S. Ct. 1684 (1961).

Petitioner had no duty to reveal to the authorities the identity and whereabouts of the person who had the car. He had no duty to reveal any incriminating facts. His conviction cannot rest on his refusal to make said revelations.

In its two opinions, however, the Court made clear that the conviction was based on those very facts, as follows:

> "[T]he defendant knowingly refused to reveal [to Investigator Shutters] the name of the owner of the car to which the stolen parts were attached. This would certainly be a basis for a finding that the defendant knowingly concealed stolen property."

> "Webb's refusal to reveal to the authorities the identity and whereabouts of the person on whose car the stolen parts had been used . . . satisfactorily establishes concealment."

The constitutional protection against self-incrimination begins with an accused's first contact with the police. It awaits neither the formal accusation or arrest nor the trial. The accused may remain silent when questioned, or may refuse to reveal incriminating facts to the authorities. The privilege against self-incrimination prevents an inference of guilt from his refusal to reveal incriminating facts. *Helton* v. *United States*, 221 F.2d 338 (5th Cir. 1955).

The scope of the privilege including the effect of silence, is the same, whether in a federal or state proceeding. *Griffin* v. *State of California*, 380 U.S. 609, 85 S. Ct. 1229 (1965).

The instant case goes further, however, and is an even clearer denial of the privilege against self-incrimination. The Supreme Court of Tennessee did not merely permit an inference of guilt to arise from the accused's "refusal to reveal". It construed that refusal as the criminal act itself. It held that that refusal itself constituted the concealment.

CONCLUSION

WHEREFORE, and for the reasons set forth in this petition, it is respectfully submitted that this petition for certiorari should be granted and the judgment of conviction of the Trial Court and the opinion and judgment of the Supreme Court of Tennessee affirming the Trial Court, be reversed and remanded

Respectfully submitted,

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